



**The Commonwealth of Massachusetts**

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**DEPARTMENT OF  
TELECOMMUNICATIONS AND ENERGY**

D.T.E. 04-106

December 29, 2004

Petition of Western Massachusetts Electric Company, pursuant to General Laws Chapter 164, § 94 and 220 C.M.R. §§ 5.00 et seq. for approval of a rate settlement effective January 1, 2005.

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ORDER ON OFFER OF SETTLEMENT

I. INTRODUCTION

On November 16, 2004, Western Massachusetts Electric Company (“WMECo” or “Company”) filed a petition with the Department of Telecommunications and Energy (“Department”) seeking approval of a rate settlement agreement (“Settlement”), pursuant to G.L. c. 164, § 94 and 220 C.M.R. §§ 5.00 et seq., entered into with the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) and the Associated Industries of Massachusetts (“AIM”) (collectively, “Settling Parties”). On December 17, 2004, WMECo filed a revised settlement agreement (“Amended Settlement”) adding the Low-Income Energy Affordability Network (“LEAN”) as a signatory to the Settlement.<sup>1</sup>

The Settling Parties state that the proposed Settlement was filed in lieu of a base rate proceeding that WMECo would have filed seeking a distribution rate increase of \$16.931 million (Transmittal Letter dated November 16, 2004, at 2). The matter was docketed as D.T.E. 04-106.

On December 2, 2004, Massachusetts Electric Company (“MECo”) submitted a request for limited participant status. Also on December 2, 2004, the Western Massachusetts Industrial Customers Group (“WMICG”) filed a petition to intervene as a full participant.<sup>2</sup>

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<sup>1</sup> The Amended Settlement revises Article VIII of the Settlement, pertaining to WMECo’s NUSmart program, discussed below. The Amended Settlement makes no change to any of the rate elements included in the original Settlement (Amended Settlement at 2, 6).

<sup>2</sup> WMICG is composed of three WMECo industrial customers: General Electric  
(continued...)

The Department held a procedural conference on December 3, 2004. At the procedural conference, MECo's petition for limited participant status was granted (Tr. at 12-13). On December 13, 2004, WMICG's petition for full party status was granted.

Pursuant to notice duly issued, the Department conducted a public hearing in Pittsfield on December 15, 2004. Also on December 15, 2004, WMICG and LEAN filed comments. WMECo filed comments on December 21, 2004. The evidentiary record consists of 115 exhibits.<sup>3</sup>

## II. DESCRIPTION OF PROPOSED SETTLEMENT

The Amended Settlement provides for an increase in WMECo's distribution rates of \$6.0 million effective January 1, 2005 and an incremental increase above the 2005 distribution rates of \$3.0 million effective January 1, 2006 (Settlement at 2-3).<sup>4</sup> Specifically, the proposed tariffs effective January 1, 2005: (1) increase base distribution rates by \$6.0 million (Settlement, Exh. A, Att. 3, at 1); (2) reduce the unit transition charge from \$0.00828 per

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<sup>2</sup> (...continued)  
Company, MeadWestvaco Corporation, and Solutia, Inc. (WMICG Petition at 1).

<sup>3</sup> On its own motion, the Department admits into evidence the following exhibits: (1) responses to 86 Department Information Requests (DTE 1-1 through 1-29; DTE 2-1 through 2-53; DTE 3-1 through 3-4), and (2) responses to 29 WMICG information requests (WMICG 1-1 through WMICG 1-20; WMICG 2-1 through WMICG 2-3; WMICG 3-1 through 3-6).

<sup>4</sup> The Settlement includes proposed tariffs for 2005 and illustrative tariffs for 2006 (Settlement, Exh. A and Settlement, Exh. B, respectively). WMECo states that the 2006 tariffs will be submitted to the Department for implementation at an appropriate date in 2005 (Transmittal Letter dated November 16, 2004, at 2).

kilowatthour (“KWH”) to approximately \$0.00500 per KWH (Settlement, Exh. A, Att. 2, at 1); and (3) increase the existing unit transmission charge by \$0.00140 per KWH to \$0.00464 per KWH (Settlement, Exh. A, Atts. 6, 9). The base distribution rate increase of \$6.0 million is equivalent to an average increase of 4.8 percent (Settlement, Exh. A, Att. 3, at 1).

The Settlement’s illustrative tariffs, effective January 1, 2006: (1) increase the existing base distribution rates by \$9.0 million (\$6.0 million in 2005 plus an additional \$3.0 million in 2006) (Settlement, Exh. B, Att. 3, at 1); (2) maintain the reduction in the transition charge from \$0.00828 per KWH to approximately \$0.00500 per KWH, subject to the need for sufficient transition charge revenues to service the Company’s rate reduction bonds (Settlement at 2; Settlement, Exh. B, Atts. 1 and 2); and (3) increase the 2004 transmission charge by \$0.00111 per KWH to \$0.00435 per KWH (Settlement, Exh. B, Att. 7). The base distribution rate increase of \$9.0 million is equivalent to an average increase of 7.2 percent (Settlement, Exh. B, Att. 3, at 1).

The proposed rates for 2005 recover the \$6.0 million base distribution rate increase and the illustrative rates for 2006 recover the \$9.0 million base distribution rate increase through the energy component of each rate class on an equal cents per KWH basis, keeping the monthly customer charge at the existing level (Settlement, Exh. A, Atts. 1-3; Exh. B, Atts. 1-3). If the Settlement is approved, on average, total bills for 2005 would decrease by 0.4 percent (Settlement, Exh. A, Att. 6). Residential non-heating customers would experience a reduction in their total bills ranging from \$0.08 to \$2.10 per month (0.3 percent to 0.4

percent) (Settlement, Exh. A, Att. 7). Residential heating customers would experience a reduction in their total bills ranging from \$0.04 to \$1.05 per month (0.3 percent to 0.6 percent) (Settlement, Exh. A, Att. 7). On average, total bills for 2006 would decrease slightly or not change from the existing rates (Settlement, Exh. B, Atts. 4, 5). Because the 2006 rate increase is recovered through an equal cent per KWH basis, the bill impacts by rate class and for individual customers are approximately the same as the average change in total bills (Settlement, Exh. B, Att. 5).

The Settlement prevents WMECo from further increasing its base distribution rates before January 1, 2007, except as follows (id. at 3). The Settlement contains an earnings sharing mechanism whereby if the Company's return on equity ("ROE") falls below 7.0 percent during 2005 or 2006, WMECo has the right to file for a distribution base rate increase (id.). For such a period where the earned ROE is below 7.0 percent, the Company's ratepayers would experience an increase in rates equal to 50 percent of the difference between the earned ROE and the 7.0 percent threshold as determined by the Department after a hearing (id.). Conversely, if the Company's earned ROE exceeds 11.0 percent during 2005 or 2006, the Company's ratepayers would be credited with 50 percent of the difference between the earned ROE and the 11.0 percent ceiling as determined by the Department after a hearing (id.). In this latter circumstance, the Attorney General also would have the right to petition the Department pursuant to G.L. c. 164, § 93 ("Section 93") to open an investigation of the Company's rates (id.). In addition, the Settlement contains an exogenous factor provision that allows WMECo to adjust its base rates in 2005 and 2006 on the same terms as those factors

allowed in Boston Gas Company, D.T.E. 03-40 (2003) and Berkshire Gas Company, D.T.E. 01-56 (2002), with the threshold amount equal to 0.001253 times operating revenues (Settlement at 5; Exh. WMICG 1-13).

The Settlement provides that WMECo will not file a performance-based ratemaking (“PBR”) mechanism until at least 30 days after the Department issues an order in WMECo’s next base rate case (id. at 3). In addition, the Settlement requires WMECo to spend for capital projects to improve reliability (an amount not less than \$24.0 million in 2005 and not less than \$24.0 million in 2006) (id. at 5). The Settlement requires WMECo to annually send out a bill stuffer “report card” relating to its service quality for the previous year (id. at 6). In addition, the Settlement requires WMECo to work with the Attorney General on service quality issues in order to propose a service quality program to the Department by June 30, 2005 (id.).

Finally, the Settlement expands the NUStart pilot program approved in Western Massachusetts Electric Company, D.T.E. 97-120 (1999) for low-income customers (id. at 5).<sup>5</sup> As noted above, the Amended Settlement addresses the NUStart program. Pursuant to the Amended Settlement, WMECo will work with LEAN in its efforts to expand the NUStart program (Amended Settlement at 5). The Amended Settlement specifies levels of expanded participation in the NUStart program as well as the terms under which customers may renegotiate initial payments (id.). The Settlement and Amended Settlement provide that any

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<sup>5</sup> The NUStart pilot program, implemented in 1999, is an incentive program designed to help low- and fixed-income customers maintain year-round electric service (Exh. DTE 3-1). Participating customers can reduce or eliminate their past due balances by paying an agreed-upon budgeted amount on time each month (id.).

costs in excess of benefits for the NUStart program will be deferred with carrying costs and recovered over an appropriate period to be determined in WMECo's next general distribution rate case (Settlement at 5; Amended Settlement at 5-6).<sup>6</sup>

### III. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department must review all available information to ensure that the settlement is consistent with Department precedent and the public interest. Fall River Gas Company, D.P.U. 96-60 (1996); Essex County Gas Company, D.P.U. 96-70 (1996); Boston Edison Company, D.P.U. 92-130-D at 5 (1996); Bay State Gas Company, D.P.U. 95-104, at 14-15 (1995); Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. Bay State Gas Company, D.P.U. 95-104, at 15 (1995); Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989).

It is well established that the Department's goals for utility rate structure are efficiency, simplicity, continuity, fairness, and earnings stability. Bay State Gas Company, D.P.U. 95-104, at 15 (1995); Bay State Gas Company, D.P.U. 92-111, at 283 (1992). See also Massachusetts Electric Company, D.P.U. 95-40, at 144-145 (1995). The Department has previously accepted settlements which include cost allocation and/or rate design when such settlements were consistent with the Department's goals. Fall River Gas Company, D.P.U.

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<sup>6</sup> Neither the Settlement nor the Amended Settlement specify how such costs in excess of benefits will be determined (Settlement at 5; Amended Settlement at 5-6).



96-60 (1996); Essex County Gas Company, D.P.U. 96-70 (1996); Bay State Gas Company, D.P.U. 95-104, at 15 (1995); Massachusetts Electric Company, D.P.U. 91-52 (1991).

#### IV. POSITIONS OF THE COMMENTERS

##### A. Settling Parties

WMECo, the Attorney General, and AIM claim that the Settlement was filed in order to obtain expeditious rate relief without adversely affecting the Company's ratepayers (Transmittal Letter dated November 16, 2004, at 2; Joint Motion at 1). In addition, the Settling Parties claim that the Settlement provides important benefits to WMECo's ratepayers, including an earnings sharing mechanism, expansion of a low-income assistance program, capital improvements, and the planned implementation of a service quality program (Joint Motion at 1-2; Transmittal Letter dated November 16, 2004, at 1-2).

WMECo asserts that the Settlement meets the Department's standard for approval in that the Settlement is consistent with Department precedent, is in the public interest, and results in just and reasonable rates (id. at 3). WMECo claims that the Settlement has broad support including the Attorney General, AIM, and LEAN (WMECo Comments at 1). Specifically, WMECo claims that the Settlement is beneficial to its customers because it provides for rate relief in the form of a decrease in total rates for 2005 and 2006 (id. at 2). Moreover, WMECo argues that the base distribution rate increase of \$15 million during this period is significantly less than the \$34 million increase that the Company was prepared to file (id. at 2). In addition, WMECo claims that customers will reap other benefits from the Settlement including a favorable earnings sharing mechanism, an expansion of the existing

NUStart program, and a commitment that a substantial level of the Company's resources will be used for capital projects designed to enhance WMECo's system reliability (id.).

B. Western Massachusetts Industrial Customer Group

WMICG argues that the Department should not approve the Settlement based only on the claimed alternative of a \$16.931 million rate increase (WMICG Comments at 2). Instead, WMICG urges the Department to suspend the rates filed with the Settlement or to reject the Settlement in its entirety (WMICG Comments at 6).

WMICG argues that all or a portion of the revenue deficiency was calculated using a method that is inconsistent with Department precedent (id. at 2). Also, WMICG claims that there insufficient evidence to justify a \$6 million rate increase (id. at 2). WMICG questions whether WMECo's proposed ROE of 11 percent is appropriate in light of (1) the 60 percent common equity ratio used in the Company's proposed capital structure and (2) the reconciliation with carrying charges of transmission costs, transition costs, standard offer service costs, and default service costs (id.). In addition, WMICG takes issue with the Company's proposed inclusion of \$44.101 million in prepaid pension expense in rate base given the absence of a fully reconciling pension adjustment mechanism (id. at 2-3, citing Exh. DTE 2-39). WMICG further requests that the Department reconcile the Company's negative pension expense for 2003 and 2004, based on WMECo's most recent actuarial report (id.).<sup>7</sup>

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<sup>7</sup> Noting that the \$44.101 million prepaid pension asset was included in rate base, WMICG claims that WMECo has, in effect, requested a return on such amount without adopting a fully reconciling pension adjustment (WMICG Comments at 2, citing NSTAR Pension, D.T.E. 03-47, Exh. C, Sch. B-1.0).

WMICG also claims that WMECo overstated its income tax expense by approximately \$3 million by failing to deduct the interest expense from the return on rate base (id. at 3, citing Settlement, Exh. C, Att. 2, Sch. 8). In addition, WMICG states that WMECo failed to make certain pro forma adjustments to booked 2003 revenues to account for special contract customers in 2003 who will not be special contract customers in 2005 (id. at 3, citing Exh. DTE 2-51).

WMICG criticizes WMECo's use of a reserve for service quality penalties of \$789,720 in computing its earned ROE, especially in light of the fact that the Settlement provides that no PBR filing will be made until after the approval of the Company's next rate increase filing (id. at 4). In addition, WMICG takes issue with the lack of a fully-allocated cost of service study and the Settlement's proposal to recover the distribution revenue increase on an equal basis from each rate class (id. at 4-5). Finally, WMICG argues that the Company should clarify how Rate PR will be determined after the end of standard offer service as on March 1, 2005 (id. at 5).<sup>8</sup>

## V. ANALYSIS AND FINDINGS

The Department has evaluated the provisions of the Amended Settlement based on the information submitted by the Settling Parties in attachments, schedules and responses to information requests issued by both the Department and WMICG. The Amended Settlement is supported by several parties representing a broad range of interests including residential,

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<sup>8</sup> Rate PR is available to partial requirements customers who self-generate all or a portion of their load and who take firm back-up, maintenance and supplemental service.

low-income, and business customers. Only WMICG objected to the Amended Settlement it focused on the Company's proposed revenue deficiency, WMECo's method of cost allocation, and the effects on customers who take service under Rate PR.

Although the Department agrees with WMICG that the Company would not likely be entitled to recover the fully claimed \$16.931 million revenue deficiency, the evidence supports a finding that the relief proposed within the Amended Settlement is consistent with Department precedent, is in the public interest and results in just and reasonable rates.

On March 1, 2005, pursuant to G.L. c. 164, § 1 et seq., all standard offer service customers will be transferred to default service. To ensure a smooth transition, it is important that electric rates remain as stable as possible. The Department finds that this Settlement provides for a smooth transition by maintaining WMECo's rates at approximately their current levels.

With respect to cost allocation, the Department finds that allocating the revenue increase on an equal cents per KWH basis is reasonable in the absence of a fully-allocated cost of service study, particularly in light of the fact that the Company anticipates filing a distribution base rate request during 2006. Colonial Gas Company, D.P.U. 84-94, at 79 (1984); Boston Edison/ComEnergy Acquisition, D.T.E. 99-19, at 27-33 (1999); Western Massachusetts Electric Company. D.P.U. 88-8C, D.P.U. 89-8C, D.P.U. 90-8C, D.P.U. 91-8C, D.P.U. 92-8C-A, D.P.U. 93-8C-1 at 6, 21 (1994). In addition, WMECo has represented that it will address WMICG's concerns with respect to Rate PR as part of a larger

filing to be made in early 2005 intended to address the termination of standard offer service (Exhs. WMICG 1-10; WMICG 1-11).

The Amended Settlement also includes an expansion of the NUSmart program, which is designed to aid low-income customers. With the prices of oil, gas and other fuels on the rise, the expansion of this program is an important customer-oriented initiative. Expansion of low-income programs are supported by the Department. See Investigation re: Discount Program Participation Rate, D.T.E. 01-106-B (2004). Moreover, to ensure that WMECo continues to provide safe and reliable service, the Amended Settlement ensures that no less than \$48 million of Company resources will go toward capital projects in the next two years (Settlement at 5).

Upon review of the entire record in this proceeding and for the reasons discussed above, the Department finds that, on balance, the Amended Settlement is consistent with applicable law, is consistent with the public interest, and results in just and reasonable rates because it provides a reasonable resolution of the myriad complex issues raised in this proceeding. NSTAR Electric Company, D.T.E. 03-121, at 49 (2004). Based on our review of the Amended Settlement, in particular the revenue deficiency calculation and bill impact analysis, the Department finds that the Amended Settlement produces just and reasonable rates and balances the competing goals of allocating costs while maintaining rate structure principles of efficiency, simplicity, continuity, fairness, and earnings stability. Therefore, the

Department finds that the Amended Settlement is in the public interest and is approved.<sup>9</sup> The Department's approval of the Amended Settlement does not constitute a determination as to the merits of any allegations, contentions, or arguments made in this proceeding. In addition, the Department's approval does not establish a precedent for future filings, whether ultimately settled or adjudicated.

Article V of the Amended Settlement allows the Attorney General to petition the Department to open a Section 93 investigation should the Company's ROE exceed 11 percent in 2005 or 2006. Approval of the Amended Settlement does not -- indeed cannot -- contradict the grant of authority made by Section 93. Eastern/Essex Acquisition, D.T.E. 98-27, at 14 (1998); see Fitchburg Gas and Electric Light Company, D.T.E. 99-118, Interlocutory Order at 5 (2001). Therefore, our acceptance of this Amended Settlement does not preclude the Department from opening its own Section 93 investigation should it see the need to do so.

Finally, the Amended Settlement requires the Company and Attorney General to work together to propose a service quality program by June 30, 2005 (Amended Settlement at 6). On December 13, 2004, the Department opened a proceeding docketed as Service Quality Guidelines, D.T.E. 04-116 to investigate the current service quality program in effect for gas and electric distribution companies. The Department approves the service quality provisions

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<sup>9</sup> The proposed Amended Settlement tariffs scheduled to take effect January 1, 2005 contain the letter "s" in the tariff numbers and leave the issuance date blank. The Company is directed to file revised tariffs identical to those contained in Exhibit A, Attachment 1 but deleting "s" from the tariff numbers and adding of the phrase "Issued per Order in DTE 04-106" and an effective date corresponding to the date of this Order.

of the Amended Settlement with the condition or caveat that our investigation in D.T.E. 04-116 may lead to wholesale replacement, or to significant modification of some or all of the components of the Company's to-be-filed service quality program. See Massachusetts Electric Company/Eastern Edison Company, D.T.E. 99-47, at 31-32 (2000).

VI. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the Amended Settlement filed on December 17, 2004, by Western Massachusetts Electric Company, and the Attorney General of the Commonwealth of Massachusetts, the Associated Industries of Massachusetts, and the Low-Income Energy Affordability Network is APPROVED; and it is

FURTHER ORDERED: That the tariffs M.D.T.E. Nos.1000Ks, 1034Fs, 1001Ks, 1035Fs, 1002Ks, 1003Ks, 1004Ks, 1005Ks, 1006Ks, 1007Ks, 1008Ks, 1009Ls, 1010Ls, 1011Ks, 1012Ks, and 1013Ks for rates effective January 1, 2005 filed with the Settlement on November 16, 2004 as Exhibit A, Attachment 1, are DISALLOWED; and it is

FURTHER ORDERED: That Western Massachusetts Electric Company file revised tariffs with M.D.T.E. Nos.1000K, 1034F, 1001Ks, 1035F, 1002K, 1003K, 1004K, 1005K, 1006K, 1007K, 1008K, 1009L, 1010L, 1011K, 1012K, and 1013K for rates effective January 1, 2005 containing the phrase "Issued per Order in DTE 04-106" and an issuance date corresponding to the date of this Order; and it is

FURTHER ORDERED: That Western Massachusetts Electric Company shall follow all other directives contained in this Order.

By Order of the Department,

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Paul G. Afonso, Chairman

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner



An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.